

# ROACH, SCHWARTZ & ASSOCIATES

## BARRISTERS & SOLICITORS

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V. BALASUBRAMANIAM  
MICHAEL A. LEITOLD  
CHARLES C. ROACH  
KIKÉLOLA ROACH  
PETER M. ROSENTHAL  
SARAH SHARTAL LEVINHAL  
SAMUEL I. WILLOUGHBY

688 St. Clair Avenue West  
Toronto, Ontario M6C 1B1

Tel: (416) 657-1465  
Fax: (416) 657-1511

rosent@math.toronto.edu

May 11, 2011

To: Compliance Audit Committee,  
City Clerk  
c/o Helen Smith  
City Hall, 10<sup>th</sup> Floor West  
100 Queen Street West  
Toronto, Ontario M5H 2N2

### **Further Submissions on behalf of Ted Ho**

1. On April 14, 2011, Ted Ho filed a request for a compliance audit of the 2010 election campaign finances of Rob Ford. Mr. Ho subsequently filed additional materials before the Compliance Audit Committee. He appeared before the Committee on May 6, 2011, at which time the Committee deferred consideration of his request to May 13, 2011. Mr. Ho recently retained counsel to make these further submissions on his behalf.
2. Mr. Ho adopts and relies upon the submission to the Compliance Audit Committee of May 5, 2011 by Max Reed and Adam Chaleff-Freudenthaler. Mr. Ho also relies upon on all of the documents that have been filed with respect to all three requests for a compliance audit of Mr. Ford's expenses. Moreover, Mr. Ho relies upon the "Schedule 2" portion of Mr. Ford's "Financial Statement –

Auditor's Report" (pages 118 – 137 of the Report) which was filed by his counsel on May 10, 2011.

3. Pursuant to the *Municipal Elections Act*, "the cost of holding fund-raising functions" is not included in the expenses for which there is a prescribed limit.

*Municipal Elections Act*, 1996, SO 1996, c 32 [hereinafter the "Act"], section 76(5).

4. Events or activities that are organized for such purposes as promoting public awareness of the candidate and at which the soliciting of contributions is incidental are not included in "the cost of holding fund-raising functions".

*Act*, section 67(2.1)(a).

5. It would appear that several of the activities listed in Mr. Ford's financial statement as fund-raising were not properly categorized as such.

6. The function described as "Wine & Cheese Event" held on March 26, 2010 was clearly for the purpose of promoting public awareness of Mr. Ford's candidacy. It was held one day after he filed his nomination. There was no admission charge. The revenue listed as received "at door" is \$7,655 and the "pass the hat cash" is given as \$250. The expense of the venue itself is \$8,529.22, and the total expenses are listed as \$34,371.72.

Page 118 of "Financial Statement – Auditor's Report".

7. The activity described as “Grand Baccus Event” held on June 5, 2010 lists a total revenue of less than \$3000 and lists total expenses as \$28,296.29. This also does not appear to be a fund-raising event within the meaning of the *Act*.

Page 119 of “Financial Statement – Auditor’s Report”.

8. Some of the other events listed as fund-raising events in Schedule 2 to the “Financial Statement – Auditor’s Report” may not have been properly described as such – see, for example, pages 124 and 134 of the “Financial Statement – Auditor’s Report”.
9. It should be noted that Mr. Ford’s spending limit was \$1,305,066.65. His “Financial Statement – Auditor’s Report” asserted that only \$1,288,855.09 was subject to the spending limit and claimed that \$434,750.68 of his expenses were not subject to the spending limit. If either or both of the expenses described on pages 118 and 119 of the “Financial Statement – Auditor’s Report” were to be determined to be subject to the spending limit, Mr. Ford would have exceeded his allowed spending limit.

*Act*, section 76 (4).

10. A document that was submitted as Appendix 11 to the May 5 submission of Mr. Reed and Mr. Chaleff-Freudenthaler is an invoice dated July 20, 2010 from a law firm. The invoice is addressed to “Doug Ford Holdings Inc.” It describes, among the services rendered, “review of Municipal Act and 2010 Election Guide

regarding issues surrounding loan to Campaign and guarantee by Doug Ford Holdings Inc.”

11. Allowable loans are specified in the *Act*. They must be from a bank or other recognized lending institution in Ontario and be paid directly into the candidate’s campaign account. Doug Ford Holdings Inc. is not a bank or a recognized lending institution.

*Act*, section 75(1).

12. Moreover, no person other than the candidate or the spouse can guarantee a loan to a campaign.

*Act*, section 75(2).

13. It is submitted that an auditor should determine whether or not loans were actually made by Doug Ford Holdings Inc. to the Campaign, and whether or not Doug Ford Holdings Inc. guaranteed any loans by the Campaign.

14. The suspicion that the *Act* was contravened is increased by the law firm’s invoice referring to “email to S. Chan regarding problem with Municipal Elections Act 1996”. Presumably, what is being referred to as the “problem” is that some aspect of the Campaign contravened the *Act*.

15. Mr. Ho has previously submitted to the Compliance Audit Committee several invoices from Doug Ford Holdings Inc. to the Rob Ford Campaign.

*Communication EA 3.1.20.*

16. A candidate is required to ensure that all payments and expenses, except for a nomination filing fee, are made from the campaign accounts. The invoices provide clear evidence that Mr. Ford contravened this requirement.

*Act, section 69 (1)(c).*

17. An auditor should determine whether or not the Rob Ford Campaign paid Doug Ford Holdings Inc. in response to those invoices. If the Campaign did pay, then the amount of the invoice was a loan to the Campaign for the period between the time that Doug Ford Holdings Inc. incurred the expense and the time that the Campaign reimbursed Doug Ford Holdings Inc. If any of the invoices were not paid by the Campaign, then such invoices would be evidence that a corporation, Doug Ford Holdings Inc., made a contribution to the Campaign. Thus either the provisions of the *Act* restricting loans or the provisions of By-law 1177-2009 prohibiting corporate contributions were contravened.

*By-law 1177-2009; Act, section 76 (3).*

18. There is evidence suggesting that Mr. Ford's campaign contravened section 76(2) of the *Act* by incurring the expense of purchasing campaign signs and shirts prior to the commencement of the campaign period. Mr. Ford filed his nomination

papers on March 25, 2011. An article from the National Post being submitted along with these submissions indicates that a bus carrying supporters of Mr. Ford appeared on Queen Street at 7:30 a.m. on that morning. The article asserts “60 or more people exit wearing campaign shirts and carrying ‘Ford for Mayor’ campaign signs.” The expense of producing those signs and shirts had to have been incurred prior to March 25.

19. Mr. Ho was entitled to vote in the election. He believes on reasonable grounds that Mr. Ford has contravened provisions of the *Act* relating to election campaign finances. He may therefore request a compliance audit of Mr. Ford’s election campaign finances.

*Act*, section 81 (1).

20. “Reasonable grounds” in this context is not to be equated with proof beyond a reasonable doubt or a *prima facie* case. The appropriate standard envisions a practical, common sense, probability as to the facts and the inferences asserted.

*Chapman v. Hamilton (City)* 2005 ONCJ 158 (CanLII) at paras. 41 and 42.

21. If there are reasonable grounds to believe that a candidate contravened a provision of the *Act* relating to election campaign finances, an auditor must be appointed to conduct a compliance audit.

*Ibid.*, paras. 45, 47 and 49.

22. There is little discretion in deciding whether to order a compliance audit once reasonable grounds are found to exist.

*Jackson v. Vaughan (City)* 2009 CanLII 10991 (O.N.S.C.) at para. 60; affirmed on appeal, 2010 ONCA 118 (CanLII).

23. Once it is plain to a municipal council that there are reasonable grounds for the belief “that a candidate has contravened a provision of the Act relating to election campaign finances” under section 81(1), then the result is a comprehensive audit of the candidate’s election campaign finances.

*Ibid.*, at para. 65.

24. Mr. Ho clearly has reasonable grounds to believe that Mr. Ford contravened sections 69 (1)(c), 75 (1), 75 (2), 76 (3) and 76 (4) of the *Act*. Indeed, it is submitted that the evidence referred to above establishes a *prima facie* case, which is much more than is sufficient to require the appointment of an auditor. Thus it is respectfully submitted that an auditor must be appointed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11<sup>th</sup> Day of May, 2011.

ROACH, SCHWARTZ & ASSOCIATES  
Barristers & Solicitors  
688 St. Clair Avenue West  
Toronto, Ontario M6C 1B1

Peter Rosenthal LSUC #330 440

Tel. (416) 657-1465

Fax:(416) 657-1511

Email: rosent@math.toronto.edu

Solicitors for Ted Ho